IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

WP(C).No. 26231 of 2006(W)

PETITIONER:

SMT.VIJAYAKUMARI, W/O.LATE D.SAHADEVAN,
PROPRIETOR, M/S.RAJASTHAN MARBLES,
KP VI-8, ANAYARA-PO, ORUVATHILKOTTAH,
THIRUVANANTHAPURAM.

BY ADV. SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN

RESPONDENTS:
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1. **THE SALES TAX OFFICER,**
   IIIRD CIRCLE, THIRUVANANTHAPURAM.

2. **THE DEPUTY TAHSILDAR (RR),**
   THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF REGISTRATION CERTIFICATE IN FORM NO.4 DTD. 8/05/1995 ISSUED BY THE 1ST RESPONDENT.**

EXT.P2: **COPY OF R.R. NOTICE DTD. 23/07/2004 IN FORM NO.1 ISSUED BYTHE 2ND RESPONDENT.**

EXT.P3: **COPY OF R.R. NOTICE DTD. 23/07/2004 IN FORM NO.10 ISSUED BY THE 2ND RESPONDENT.**

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.26231 OF 2006-W

Judgment

The petitioner is the widow of late Sahadevan. He was an assesssee under the KGST Act, doing business in Marbles at Anayara, Thiruvananthapuram. He died on 22.12.2002. When he was alive, the sales tax registration granted to him was cancelled by the competent authority on 22.05.2001. Subsequently, the assessment for the year 1998-99 was reopened by the competent authority by issuing notice dated 25.02.2003 under Section 19(1) of the KGST Act. The notice was issued to the dead man. Later, the assessment was re-opened and a fresh assessment order was passed on 03.03.2004. Thereafter, revenue recovery proceedings were initiated by issuing Exts.P2 and P3 notices to the petitioner's husband on 23.07.2004. This Writ Petition was filed challenging Exts.P2 and P3. revenue recovery notices.

2. The first respondent has filed a counter affidavit. The above facts are not disputed by them. But, the learned Government Pleader submits that the petitioner can work out her remedy against the order re-opening the assessment after getting the copy of the same. I think, the petitioner need not undergo the said ordeal. The order re-opening the assessment is void ab initio as the re-opening was done with notice to a dead man. An order ab initio void can be challenged even in execution proceedings. Void assessment orders can be attacked collaterally in enforcement proceedings. So, having regard to the facts of the case, it is ordered that the revised assessment order is void ab initio and

therefore, unenforcible. Accordingly, Exts.P2 and P3 are quashed. The competent authority is given liberty to re-open the assessment if so advised, if the same is permissible in accordance with law, with notice to the legal heirs of the deceased assessee.

The Writ Petition is disposed of as above.

23.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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